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## RESOLUTION

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APPROVAL TO ENTER INTO A REVOCABLE PERMIT WITH THE STATE OF HAWAII, DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, TO USE AND OCCUPY LANDS UNDERLYING THE H-1 NIMITZ HIGHWAY VIADUCT AT THE MIDDLE STREET/KEEHI INTERCHANGE (INTERSTATE HIGHWAY FAP NO. I-HI-1(82), TMK: (1)1-1-003: PORTION OF ROAD, FOR THE PURPOSE OF STAGING OF EQUIPMENT FOR THE HART CONSTRUCTION OF RAIL – AIRPORT SEGMENT.

WHEREAS, in October 2017, the State of Hawaii, Department of Transportation, Highways Division ("DOT") and the City Administration began discussions regarding persistent and growing concerns pertaining to entrenched encampments of homeless persons under the Nimitz Viaduct, more particularly shown in Exhibit A; and

WHEREAS, the DOT and the City and County of Honolulu ("City") determined that enforcement actions were necessary to clear the homeless encampments for health and safety reasons; and

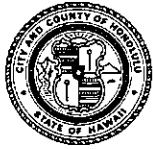
WHEREAS, the DOT, as owner of the lands under the Nimitz Viaduct, agreed to take the lead to coordinate enforcement actions with the City providing support services; and

WHEREAS, the DOT and the City further agreed that the enforcement action to clear the area needed to be coupled with establishment of a watchful presence and security of the area in order to prevent a reoccurrence of homeless encampments; and

WHEREAS, the City had a need to provide a construction staging area to HART's awarded contractor for the Airport Segment of the rail construction, the joint venture of Shimmick Construction, Traylor Bros., Inc. and Granite Construction (STG), which holds the design-build contract for four stations and 5.2 miles of elevated guideway near the airport; and

WHEREAS, the DOT and the City reached an agreement to: 1) have the enforcement action proceed, and 2) have the DOT issue a Revocable Permit to the City for the purposes of allowing its employees, officers, agents, representatives, consultants, contractors and invitees (collectively "Permittee") to utilize the site for the purpose of staging equipment and storage; and

WHEREAS, the DOT lead an enforcement action to clear the homeless encampments in October 2017; and



# CITY COUNCIL

CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

No. 18-189, FD1

## RESOLUTION

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WHEREAS, the DOT issued an immediate Use and Occupancy Permit to the City and the City had the subject area fenced and cleared while the DOT completed federally required consultations with the State DLNR Historic Preservation Division, the federal United States Department of Fish and Wildlife and the Federal Highways Administration in order to issue the City a Revocable Permit; and

WHEREAS, the DOT has successfully completed its consultations and has submitted the draft Revocable Permit, attached as Exhibit B, for the City's approval and execution; and

WHEREAS, the DOT offers the Revocable Permit at gratis in exchange for the Permittee to provide a watchful presence and security of the area; and

WHEREAS, ROH, Section 1-8.6 requires City Council ("Council") approval of Honolulu High-Capacity Transit Corridor Project agreements as follows:

1) Any agreements or amendments to agreements concerning the Honolulu High-Capacity Transit Corridor Project that place an obligation on the City (other than HART or the Board of Water Supply) will require prior Council consent and approval; and

2) The final or draft version of the agreement or amendment must be provided to the Council for review prior to the Council's approval. In the event a draft agreement or draft amendment to an agreement is provided, if a material change is made to the draft agreement or draft amendment to the agreement after Council approval, such change will require additional Council review and approval; now, therefore,

BE IT RESOLVED that the City Administration seeks the approval of the Council to enter into a Revocable Permit, substantively in the form attached hereto as Exhibit B; and



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

No. 18-189, FD1

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**RESOLUTION**

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BE IT FINALLY RESOLVED that the Council hereby grants approval for the City to enter into a Revocable Permit with the DOT to use and occupy the lands under the H-1 Nimitz Highway Viaduct for the purposes described herein.

INTRODUCED BY:

Ernest Martin (br)

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\_\_\_\_\_  
\_\_\_\_\_

DATE OF INTRODUCTION:

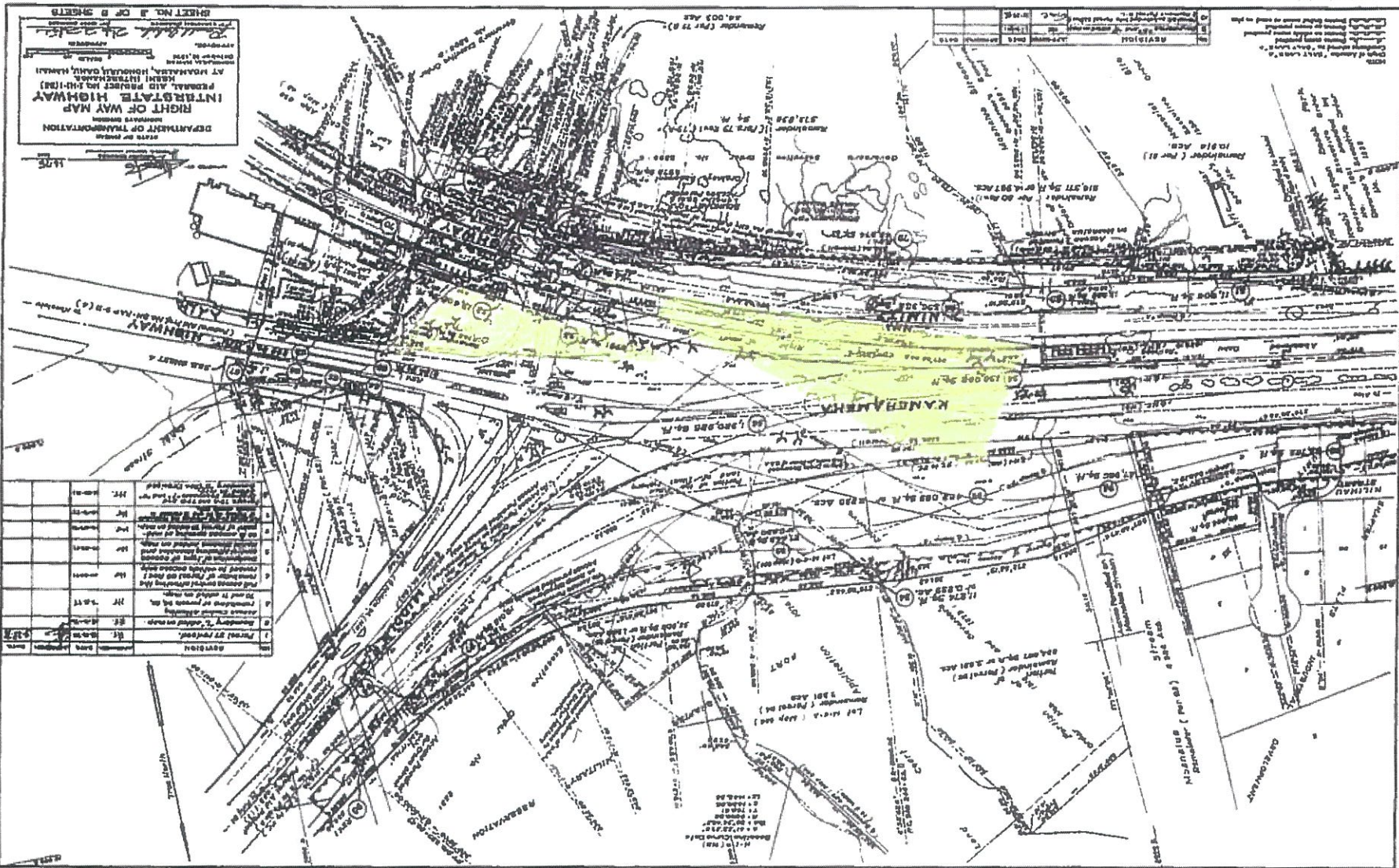
August 29, 2018  
Honolulu, Hawaii

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Councilmembers

[illegible]

DEPARTMENT OF TRANSPORTATION  
INTEGRATE HIGHWAY  
RIGHT OF WAY MAP  
FEDERAL AID PROJECT NO. 1-11-102  
KANSAS INTERCHANGE  
AT WYOMING, HONOLULU, OAHU, HAWAII  
IN 1946-1948

[illegible]

## Exhibit A

STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
HIGHWAYS DIVISION  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813

REVOCABLE PERMIT NO. HY-18-145

The STATE OF HAWAII, hereinafter called the "STATE," hereby grants to the "PERMITTEE" named below permission to enter, use and occupy on a month-to-month basis the premises described in Item 2, and on map Exhibit "A," attached hereto and made a part hereof ("Premises"), for the purpose(s) specified in Item 3 to perform all other obligations imposed upon it by the Terms and Conditions attached hereof.

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|--|---|
| 1. PERMITTEE:<br>(NAME, ADDRESS &<br>FACSIMILE NUMBER) | Department of Land Management<br>City and County of Honolulu<br>558 South King Street<br>Honolulu, Hawaii 96813 |
| 2. PREMISES:<br>(SIZE & LOCATION)                      | Interstate Highway<br>FAP No. I-H1-1(82)<br>TMK (1) 1-1-003: Portion of Road                                    |
| 3. PURPOSE(S):   | Staging of Equipment  |
| 4. RENTAL:   | \$0.00 per month  |
| 5. SECURITY DEPOSIT:                                   | \$0.00  |
| 6. EFFECTIVE DATE:                                     |   |

Dated at Honolulu, Hawaii, \_\_\_\_\_, 20\_\_\_\_\_.

PERMITTEE

STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Its: Highways Administrator

EXHIBIT B

## TERMS AND CONDITIONS

1. **TERM.** This Permit creates a month-to-month tenancy. The tenancy created by this Permit is self-renewing at the end of each month. This Permit, which creates the month-to-month tenancy, shall continue in full force and effect for a period of one year from and after the effective date. This Permit shall be renewed automatically for successive one-year periods unless the PERMITTEE is in arrears in the payment of any taxes, rents, or any other obligation due the State or any County, in which case this Permit will expire at the end of such one-year period.

2. **PERMITTEE'S PRIOR INSPECTION.** The PERMITTEE warrants that it has had the opportunity prior to entering in to this Permit to inspect the Premises and all improvements thereon, knows the condition thereof, accepts the Premises, in an "as is" condition, including soil, water, and structures, and fully assumes all risks incident to the use and enjoyment of the Premises. If the Premises require cleaning, painting, repairs or removal of trash, debris, and other unwanted items, PERMITTEE agrees that such activities will be at the sole cost and expense of PERMITTEE and that notwithstanding the condition of the Premises at the inception of this Permit, the PERMITTEE will be required to surrender the Premises to the STATE in the condition set forth in paragraph 22 below (Surrender and Return of the Premises).

PERMITTEE acknowledges that the opportunity to inspect has included the right to conduct such environmental testing as the PERMITTEE deems prudent.

3. **SECURITY DEPOSIT.** The PERMITTEE, upon execution of this Permit, shall deposit with the STATE in legal tender or in such other form as may be acceptable to the STATE an amount equal to two months' rental as security for the faithful performance on its part of all the terms and conditions of this Permit. The deposit will be returned, without interest, to the PERMITTEE within a reasonable period of time following the termination of this Permit if PERMITTEE has faithfully performed said terms and conditions to the satisfaction of the STATE. In the event the PERMITTEE does not so perform, the STATE may apply the security deposit as an offset to any amounts owed by the PERMITTEE to the STATE.

4. **LIABILITY AND FIRE INSURANCE.** The PERMITTEE shall, procure and maintain in force during the term of this Permit:

a) a comprehensive general liability insurance policy or policies, of insurance with policy limits, at a minimum of one million dollars (\$1,000,000.00) for bodily injury and damage to property per occurrence and two million dollars (\$2,000,000.00) in the aggregate. The specification of general liability insurance limits herein shall not be construed in any way to be a limitation of the liability of the PERMITTEE under the terms of this Permit. PERMITTEE shall also procure and maintain in force the environmental insurance coverage specified in Paragraph 28(b)(xii) below (Environmental Insurance).

b) a fire insurance policy to cover improvements to real property if any, with limits of \$0. If any loss occurs while such fire insurance policy is not in effect, PERMITTEE shall be liable to the extent coverage would have been provided under such insurance policy.



5. **INSURANCE GENERAL PROVISIONS.** The insurance required by paragraph 4 (Liability and Fire Insurance) shall:

- a) be issued by an insurance company authorized to do business in the State of Hawaii or approved in writing by the Director of Transportation;
- b) name the State of Hawaii as an additional insured;
- c) provide that the Department of Transportation shall be notified at least thirty (30) days prior to any termination, cancellation or material change in its insurance coverage;
- d) cover all injuries, losses or damages arising from, growing out of, or caused by any acts or omissions of the PERMITTEE, its officers, agents, employee, invitees or licensees, in connection with the PERMITTEE's operations or use or occupancy of the Premises; and
- e) be maintained and kept in effect at the PERMITTEE's own expense throughout the life of this Permit, evidenced by furnishing the STATE without notice or demand a certificate of insurance upon each renewal thereof.

6. **INDEMNITY.** The PERMITTEE shall indemnify, defend, and hold harmless the STATE, its officers, agents, and employees from and against any and all liability, losses, damages, claims, demands, actions, and suits for loss or damage, including claims for property damage, personal injury or death, arising out of or in connection with the use or occupancy of the Premises or operations conducted on or from the Premises, or any act or omission by PERMITTEE or any person claiming by or through PERMITTEE, including, without limitation, PERMITTEE's employees, agents, permittees, concessionaires, customer or visitors. PERMITTEE further agrees to promptly notify the STATE in writing of any claims, demands, loss, actions, or suits affecting the Premises. With respect to any defense provided by PERMITTEE under this paragraph, the choice of counsel shall be subject to the reasonable approval of the STATE. PERMITTEE's duty to defend any suit shall be determined from a reading of the claim as set forth in the complaint and shall extend to the defense of claims that are frivolous or without merit.

7. **METHOD OF PAYMENT OF RENTAL AND SERVICE CHARGE ON DELINQUENT PAYMENTS CHARGES.** The monthly rental shall be payable in advance, without notice or demand, at the Highways Division Fiscal Office at the address set forth in Paragraph 27 below (Notices and Payments) on the first day of each and every month during the term of this Permit. In accordance with the Hawaii Administrative Rules, the PERMITTEE agrees to pay a service charge of not more than \$50.00 each month for any month in which payments are delinquent. The term "delinquent payments" as used herein means any payment of rent, fees, service charges, or other charges payable by the PERMITTEE to the STATE, which are not paid when due.

8. **INTEREST.** The PERMITTEE agrees to pay interest at a rate of one percent (1%) per month, assessed on a monthly basis, on all delinquent payments until the same are paid in full.

9. **ACCEPTANCE OF RENT NOT A WAIVER.** The acceptance of rent by the STATE shall not constitute a waiver of any breach by the PERMITTEE of any of the terms and conditions of this Permit, or of the STATE's right to terminate this Permit. Failure by the STATE to insist upon strict performance hereof by the PERMITTEE, or to exercise any option herein reserved, shall not be construed as a waiver or as a relinquishment of any of its rights under this Permit.

10. **RESERVATION OF RIGHT TO AMEND THE TERMS AND CONDITIONS, INCLUDING THE RIGHT TO INCREASE OR DECREASE RENT.** The STATE reserves the right to amend any of the terms and conditions hereof, including the right to increase or decrease the monthly rental, at any time upon thirty (30) days' advance written notice.

11. **UTILITIES AND OTHER CHARGES.** The PERMITTEE shall be responsible for and pay all charges for water, electricity, telephone and other utilities and all charges for sewer, garbage and trash disposal. If such services are provided by the STATE, PERMITTEE shall pay the STATE's charges therefore, subject to the same terms as payment of rent.

12. **WASTE, STRIP AND NUISANCE; MAINTENANCE.** The PERMITTEE shall not make, permit or suffer any waste, strip, nuisance or any other unlawful, improper or offensive use of the Premises.

The PERMITTEE shall maintain the Premises, improvements thereon, all equipment and other personal property of the PERMITTEE upon the Premises in a strictly clean, neat, safe, orderly and sanitary condition, free of waste, rubbish and debris and shall provide for the safe and sanitary handling and disposal of all trash, garbage and other refuse from the Premises

13. **ENTRY BY STATE.** The STATE or its agents and employees may enter the Premises at all reasonable hours to inspect the Premises to examine the same or for any other proper purpose. The PERMITTEE shall not make any claim for damages or set-off of rent, service charge or other charges by reason or on account of such entry.

14. **REPAIRS.** The PERMITTEE shall, at its own expense, keep and maintain the improvements in a condition similar to that which existed on the effective date of this Permit, ordinary wear and tear and damage by acts of God excepted.

15. **IMPROVEMENTS, ALTERATIONS OR ADDITIONS.** No substantial improvement, alteration or addition of a structural nature shall be made, installed or constructed on, under or within the Premises by the PERMITTEE unless it first submits its plans and specifications therefor to the STATE for its approval and unless said plans and specifications are first approved in writing by the STATE. Such plans and specifications shall be in full compliance with all applicable statutes and rules and regulations. The STATE may impose reasonable conditions on its approval.

Any improvements, alterations or additions shall be accomplished at the sole cost and risk of the PERMITTEE and the STATE shall not be responsible for any damage to or injury to persons or property arising from the construction, maintenance or use of any



such improvements, alterations or additions. Once installed or constructed, such improvements, alterations or additions shall be subject to the provisions of Paragraph 24 below (Option of State to Require Removal of Improvements, Additions, Alterations, Fixtures, and Equipment).

The granting of approval to install or construct improvements shall not constitute a representation or promise by the STATE that the PERMITTEE's possession of the Premises under the Permit will (a) continue for any particular length of time, including without limitation, a sufficient period of time to reasonably amortize the cost of such improvements; or (b) that the STATE will be liable to compensate PERMITTEE for any portion of the cost of such improvements.

16. **COMPLIANCE WITH LAWS; DISCRIMINATION PROHIBITED.** The PERMITTEE shall comply with all laws, ordinances and rules and regulations of all governmental agencies, applicable to the Premises or relating to and affecting any business or other commercial activity conducted on the Premises.

The use and enjoyment of the Premises shall not be in support of any policy which discriminates against anyone based upon race, creed, color, sex or national origin.

The PERMITTEE, for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree that in the event facilities located on the Premises are used for a purpose for which a United States Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the PERMITTEE shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code A, Office of the Secretary, Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended from time to time.

That in the event of breach of any of the above non-discrimination covenants, the STATE shall have the right to terminate this Permit and reenter and repossess the Premises and the facilities thereon, and hold the same as if said Permit had never been made or issued.

17. **TRANSFERABILITY.** This Permit and the Premises or any part thereof, inclusive of any and all rights or obligations accruing or arising under it, shall not be sold, transferred, assigned, leased, mortgaged, sublet or otherwise alienated or encumbered in any manner whatsoever.

18. **PROPERTY TAXES.** The PERMITTEE shall pay all real property taxes lawfully assessed against the Premises.

19. **TERMINATION AT OPTION OF EITHER PARTY.** This Permit may be terminated by either party without cause upon thirty (30) days' advance written notice.

20. **TERMINATION BY REASON OF DEFAULT.** The occurrence of one or more of the following events shall constitute a default under terms of this Permit:

- a) the failure by PERMITTEE to make any payment when due, where such failure shall continue after five (5) days' written notice from the STATE to cure such default; or
- b) the failure by PERMITTEE to cure any non-monetary default, when such failure shall continue after ten (10) days' written notice from the STATE specifying the particular non-monetary default. As to such non-monetary defaults, PERMITTEE shall not be in default so long as a cure is commenced within the ten (10) day period and is completed within thirty (30) days of such written notice.

In the event of a default under the Permit, the STATE may declare the Permit terminated. In such event, the STATE shall have, in addition to all rights set forth in this Permit, all rights as a landlord as provided by law.

21. **RIGHT TO RE-ENTER AND ASSUME POSSESSION.** Upon termination of this Permit under paragraphs 19 or 20 herein, the STATE may, without necessity of court action, enter upon and administratively take possession of the Premises.

22. **SURRENDER AND RETURN OF THE PREMISES.** Upon termination of this Permit, PERMITTEE shall peaceably deliver up possession of the Premises to the STATE in good order and good and clean condition, reasonable wear and tear excepted, with buildings returned to the STATE in broom clean condition and all grounds and yards of even, level grade, free of trash, protruding items, debris or other unwanted items. If improvements, additions, alterations, fixtures or equipment are removed any damage caused by the installation or removal shall be repaired. The PERMITTEE shall deliver up and surrender to the STATE all keys, including lock combination numbers or codes. If the Premises are not returned in good order and good and clean condition after such time as PERMITTEE shall vacate or deliver up possession, rent shall continue to accrue as provided herein and the STATE may affect restoration, removal, or disposition and assess the cost to PERMITTEE, or assess the cost thereof to PERMITTEE based upon estimates. In the cases where the PERMITTEE shall have vacated the Premises, but failed to surrender the Premises in good and clean condition as required by this paragraph, or failed to comply with paragraph 24 (Option of State to Require Removal of Improvements, Additions, Alterations, Fixtures, and Equipment) the obligation to pay rent shall continue until the STATE has completed such restoration, removal, or disposition provided, however, that in no such event shall rent continue for a period in excess of two (2) months beyond the date PERMITTEE shall have vacated the Premises or have abandoned its efforts to comply with paragraph 24 (Option of State to Require Removal of Improvements, Additions, Alterations, Fixtures, and Equipment).

23. **REMOVAL OF FIXTURES AND EQUIPMENT.** The PERMITTEE shall have the right at its own expense to remove any and all fixtures and equipment installed by it on the Premises, provided that: (a) PERMITTEE shall give five (5) days' prior written notice of its intention to remove such fixtures and equipment; (b) the removal shall be completed during the time PERMITTEE occupies the Premises and (c) the Premises are restored by PERMITTEE to the condition which existed immediately prior to the installation thereof, reasonable wear and tear

excepted. The PERMITTEE's failure to give such written notice prior to the date of termination of the Permit or the failure to complete such removal by the end of the term or within any extension of time granted in writing by the STATE shall be deemed to be a waiver of the right of removal and shall constitute an abandonment of such fixtures and equipment.

24. **OPTION OF STATE TO REQUIRE REMOVAL OF IMPROVEMENTS, ADDITIONS, ALTERATIONS, FIXTURES AND EQUIPMENT.** The STATE, with respect to any improvements, additions, alterations, fixtures and equipment or any portions thereof constructed or installed on the Premises by the PERMITTEE, reserves the right upon giving written notice prior to the termination or within twenty (20) days after the date of termination of this Permit, to require PERMITTEE to remove the same at PERMITTEE's cost and risk, such removal to be completed within thirty (30) days after receipt of such notice. PERMITTEE shall restore the Premises to a condition set forth in paragraph 22 (Surrender and Return of the Premises).

25. **HOLD OVER TENANCY.** If the PERMITTEE does not vacate the Premises upon the termination of the Permit, the PERMITTEE shall pay the STATE hold over rent. The rent for each day, or part of a day, during which the PERMITTEE remains in possession will be an amount double the per diem rate payable immediately prior to the termination of the Permit.

26. **ATTORNEY'S FEES AND OTHER EXPENSES.** The PERMITTEE shall pay to STATE all costs and expenses, including reasonable attorney's fees:

a) incurred by the STATE as a prevailing party in enforcing any of the obligations of PERMITTEE under this Permit and in remedying any breach by the PERMITTEE, in recovering possession, and in collecting delinquent rents on other changes; and

b) incurred by the STATE in connection with any litigation commenced by or against PERMITTEE arising out of the use or possession of the premises by PERMITTEE, where the STATE is found not to be liable or where, if both the STATE and PERMITTEE are liable by reason of negligence, said negligence or the part of the STATE is ordinary and not gross negligence and the STATE's degree of negligence is less than that of PERMITTEE.

27. **MISCELLANEOUS PROVISIONS.**

a) Interpretation. The use of any gender shall include all genders, the use of the singular shall include the plural and the use of the plural shall include the singular, as the context may require.

b) Governing Law. This Permit shall be governed by the laws of the State of Hawaii.

c) Paragraph Headings. The paragraph headings herein are inserted only for convenience and reference and shall in no way define, limit or describe the scope or intent of any provision of this Permit.

d) Entire Agreement. This Permit contains the entire understanding among the parties and supersedes any prior or contemporaneous understandings or agreements between them respecting the matters herein.

e) Rights and Remedies Cumulative. Each right and remedy of the parties provided for in this Permit shall be cumulative and shall be in addition to every other right or remedy. The exercise or the beginning of the exercise by either party of any one or more of the rights or remedies set forth herein shall not preclude the simultaneous or later exercise by that party of any or all other rights or remedies provided for in this Permit or by law.

f) Survival of Rights. Neither the termination of the Permit nor the occupancy of PERMITTEE under the Permit shall affect any right which has accrued prior thereto.

g) Time of the Essence. Time is of the essence of this Permit.

h) Amendment. Except as provided in paragraph 10 (Reservation of Right to Amend the Terms and Conditions, Including the Right to Increase or Decrease Rent), this Permit may only be amended by an instrument in writing signed by each of the parties hereto.

28. **ENVIRONMENTAL COMPLIANCE – PERMITTEE’S DUTIES.**

a) Definitions.

For purposes of this Permit, PERMITTEE agrees and understands that the following terms shall have the following meanings:

“Environmental laws” shall mean all federal, State and local laws of every nature including statutes, ordinances, rules, regulations, codes, notices, standards, directives of every kind, guidelines, permits, licenses, authorizations, approvals, interpretations of the foregoing by any court, legislative body, agency or official, judicial decisions, orders, rulings or judgments, or rules of common law which currently are in effect or which may come into effect through enactment, issuance, promulgation, adoption or otherwise, which in any way pertain to, relate to, or have any relevance to the environment, health or safety. These environmental laws include, but are not limited to, regulations and orders of the Federal Environmental Protection Agency and of the State of Hawaii Department of Health.

“Hazardous substance” shall mean and include any chemical, substance, organic or inorganic material, controlled substance, object, condition, waste, living organism, or combination thereof which is, may be, or has been determined by proper State or federal authority under any environmental law to be, hazardous to human health or safety or detrimental to the environment. This term shall include, but not be limited to, petroleum hydrocarbons, asbestos, radon, polychlorinated biphenyls (PCBs), methane, fuels of any kind, and other materials or substances that are regulated by State or federal authorities.

b) PERMITTEE's Activities and Duties.

i. **Compliance with Environmental Laws.** PERMITTEE agrees, at its sole expense and cost, to comply with all environmental laws that apply to the Premises during the term of this Permit, and PERMITTEE's occupancy of, and activities on, the Premises. The PERMITTEE's duty to comply with environmental laws shall also include complying with all environmental laws, regulations and orders that may apply, or be determined to apply, to the occupancy and activities of the PERMITTEE on the Premises after the expiration or termination of this Permit.

ii. **Hazardous Substances.** PERMITTEE shall not use, store, treat, dispose, discharge, release, generate, create, or otherwise handle any hazardous substance, or allow the same by any third person, on the Premises without first obtaining the written consent of the STATE and complying with all environmental laws, including giving all required notices, reporting to, and obtaining permits from, all appropriate authorities, and complying with all provisions of this Permit.

iii. **Notice to the State.** PERMITTEE shall keep the STATE fully informed at all times regarding all environmental law related matters affecting the PERMITTEE or the Premises. This duty shall include, without limitation, providing the STATE with a current and complete list and accounting of all hazardous substances of every kind which are present on or about the Premises and with evidence that the PERMITTEE has in effect all required and appropriate permits, licenses, registrations, approvals and other consents that may be required of or by federal and State authorities under all environmental laws. This duty shall also include providing immediate written notice of any investigation, enforcement action, remediation or other regulatory action, order of any type, or any legal action, initiated, issued, or any indication of an intent to do so, communicated in any manner to the PERMITTEE by any federal or State authority or private party which relates in any way to any environmental law or any hazardous substance and the PERMITTEE or the Premises. This written notice to the State shall include the PERMITTEE immediately providing the State with copies of all such written communications from private parties or State and federal authorities, including copies of all correspondence, claims, complaints, warnings, reports, technical data and any other documents received or obtained by the PERMITTEE. At least thirty (30) days prior to termination of this Permit, or termination of the possession of the Premises by PERMITTEE, whichever shall first occur, PERMITTEE shall provide the STATE with written evidence satisfactory to the STATE that PERMITTEE has fully complied with all environmental laws, including any orders issued by any governmental authority to the PERMITTEE that relate to the Premises.

iv. **Notice to Authorities.** PERMITTEE shall provide written notice to the Environmental Protection Agency and the State of Hawaii Department of Health at least sixty (60) days prior to the termination of this Permit, or sixty (60) days prior to PERMITTEE's termination of possession of the Premises, whichever occurs first, the fact that PERMITTEE intends to vacate the Premises and terminate its operations on those Premises. PERMITTEE shall allow the agents or representatives of said authorities access to the Premises at all and any reasonable times for the purpose of inspecting the Premises and taking samples of any material for inspection or testing for compliance with any environmental laws. PERMITTEE shall provide copies of said written notices to the STATE at the time said notices are provided to said authorities.

v. **Disposal/Removal.** Except for materials that are lawfully sold in the ordinary course of the PERMITTEE's business and for which the PERMITTEE has obtained all required authorizations from appropriate authorities including the prior written permission of the STATE to have said substance on the Premises, PERMITTEE shall cause any hazardous substances to be removed from the Premises for disposal. This duty shall include the transportation of said hazardous substance from the Premises solely by duly licensed hazardous substance transporters to duly licensed facilities for final disposal as required by all applicable environmental laws. Within ten (10) days of each such disposal, PERMITTEE shall provide the STATE with copies of documentary proof, including manifests, receipts or bills of lading, which reflect that said hazardous substances have been properly removed and disposed of in accordance with all environmental laws.

vi. **Environmental Investigations and Assessments.** The PERMITTEE, at its sole cost and expense, shall cause to be conducted such investigations and assessments of the Premises to determine the presence of any hazardous substance on, in, or under the Premises as may be directed from time to time by the STATE, in its sole discretion, or by any federal or State authority. The extent and number of any environmental investigations and assessments shall be determined by the STATE or the federal or State authority directing said investigations and assessments to be conducted. PERMITTEE shall retain a competent and qualified person or entity that is satisfactory to the State or governmental authority, as the case may be, to conduct said investigations and assessments. PERMITTEE shall direct said person or entity to provide the STATE or governmental authority, if so requested, with testable portions of all samples of any soils, water, ground water or other material that may be obtained for testing and provide directly to the STATE and the governmental authority at the sole expense of the PERMITTEE written results of all tests on said samples upon completion of said testing.

In any event, PERMITTEE shall be required to have environmental assessments conducted as aforesaid prior to, or at the time of, the PERMITTEE taking possession of the Premises and prior to, or at the time of, the termination of this Permit in order to determine the condition of the Premises. Such testing at the time of taking possession may be waived at the request of PERMITTEE; provided, that PERMITTEE shall have the burden of proof at the termination of this Permit to prove that any hazardous substances found on the site at the termination of the Permit did not result from PERMITTEE's use or occupancy of the Premises. The latter requirement may be waived by the STATE in its sole discretion; provided, however, that any such waiver shall be in writing.

vii. **Remediation.** In the event that any hazardous substance is used, stored, treated, disposed of, handled, discharged, released, or determined to be present on the Premises, or to have migrated from the Premises, PERMITTEE shall, at its sole expense and cost, remediate the Premises, or any location off the Premises to which it is determined that the hazardous substance has migrated, of any hazardous substances. Said duty to remediate includes the removal and disposal of said hazardous substances in accordance with subsection (b)(v)(Disposal/Removal) of this paragraph. This duty to remediate includes strictly complying with all environmental laws and directives to remediate said hazardous substance issued from the STATE or any federal or State governmental authority charged with enforcing the environmental laws. This duty to remediate shall include replacement of any materials, such as soils, so removed with material that is satisfactory to the



STATE and governmental authority, as the case may be. If the PERMITTEE has conducted an initial site assessment of the Premises which includes soil and ground water analyses for hazardous substances at the commencement of this Permit or the PERMITTEE's occupancy, whichever shall have first occurred, to the satisfaction of the STATE, the PERMITTEE shall be responsible for remediation and restoration of the Premises to the extent it is necessary to remediate and restore the Premises to the condition of the Premises and levels of contamination or hazardous substances that existed on the Premises at the commencement of the Permit or PERMITTEE's occupancy, whichever shall have first occurred, as shown by said initial site assessment.

viii. **Tanks, Pipelines; Inspections and Repairs.** All tanks, pipelines, containers or conduits of any kind that may at any time be used to contain, or may be intended to contain, hazardous substances of any type (hereafter referred to as a "facility"), that the PERMITTEE intends to install on the Premises must be installed above ground level in such manner that allows for periodic inspection and maintenance of the facility for purposes of determining the existence of leaks and discharges from, and deterioration of any kind to, and that allows repair of, the facility. PERMITTEE shall provide the STATE with prior notice of PERMITTEE's intent to install a facility to allow the STATE ample time, as determined by the STATE, to inspect such a facility. Said facilities shall not be installed unless and until the facilities, and manner of installation, are first approved by the STATE. Within ninety (90) days of the commencement of this Permit, or commencement of possession of the Premises by the PERMITTEE, whichever first occurs, PERMITTEE shall submit a contingency plan to control and remedy any spill, discharge or leak from any facility on the Premises, which plan shall include the cleanup of all hazardous substances so spilled, discharged or leaked to the satisfaction of the STATE. The PERMITTEE shall also submit a plan for the PERMITTEE to conduct, or have conducted, regular inspections of all facilities on the Premises for the purpose of prevention of any leak, discharge or spill from said facilities. Said contingency plan and inspection plan are subject to the approval of the STATE.

ix. **Environmental Restoration Upon Surrender of Premises.** The PERMITTEE hereby agrees, at its sole cost and expense, to restore the soil, water and structures on, in, or under the Premises, to the same environmental condition as existed at the commencement of this Permit. In the event PERMITTEE does not restore the Premises to the same environmental condition as it existed at the commencement of the Permit, as determined by the STATE, the PERMITTEE understands and agrees that the STATE may exercise its rights under subsection (b)(x) of this paragraph (State's Right to Act). Until such time as remediation and restoration is complete to the satisfaction of the STATE, PERMITTEE shall be liable for the rent under the Permit as if the Permit had continued in effect during the period of restoration. The extent of PERMITTEE's obligation to remove hazardous substances and restore and remediate the Premises shall be determined in accordance with subsection (b)(vi) of this paragraph above (Environmental Investigations and Assessments).

x. **State's Right to Act.** In the event the PERMITTEE fails for any reason to comply with any of its duties under this Permit or under any environmental laws within the time set for doing so, or within a reasonable time as determined by the STATE, the STATE shall have the right, but not the obligation, in its sole discretion, to perform those duties, or cause them to be performed. PERMITTEE hereby grants access to the Premises at all reasonable hours to the STATE,

its agents and anyone designated by the STATE in order to perform said acts and duties. Any cost, expense or liability of any type that may be incurred by the STATE in performing said acts or duties shall be the sole responsibility of the PERMITTEE and PERMITTEE hereby agrees to pay for those costs and expenses and indemnify the STATE for any liability incurred. This obligation shall extend to any costs and expenses incident to enforcement of STATE's right to act, including litigation costs, attorney's fees and the costs and fees for collection of said cost, expense or liability.

x. **Environmental Indemnity.** In addition to the provisions of paragraph 6 above (Indemnity) and not in limitation thereof, PERMITTEE hereby agrees to indemnify, defend with counsel approved by the STATE, and hold harmless the STATE from any liability that may arise in connection with, or by reason of, any claim involving any hazardous substance that may be alleged to be connected or related in any way with the Premises, the STATE's ownership of the Premises, or this Permit, including the presence of any hazardous substances on the Premises. PERMITTEE understands and agrees that any claims for damages, judgments, assessment, fines or penalties that may be assessed against the PERMITTEE or the STATE by any person in governmental authority for reason of any environmental law violation concerning the Premises shall be paid, complied with, and in every way satisfied by the PERMITTEE and not by the STATE; provided, however, that the environmental indemnity set forth herein shall not extend or expand PERMITTEE's responsibility for any hazardous substances beyond PERMITTEE's responsibility for hazardous substances at the inception of the Permit as set forth in subsection (b)(vi)(Environmental Investigations and Assessments).

xii. **Environmental Insurance.** As part of the insurance requirements under paragraph 4 above (Liability and Fire Insurance), and effective at the commencement of this Permit, the insurance coverage PERMITTEE obtains shall provide coverage for any occurrence causing bodily injury and damage to property arising out of the use or storage of any hazardous substances on the Premises.

29. **SPECIAL TERMS AND CONDITIONS.** Notwithstanding any conflict with the prior provisions, the following provisions shall control.

- A. Rent and Security Deposit. Not applicable.
- B. Liability and Fire Insurance. (Section 4) Not required. See Special Terms S and T.
- C. Method of Payment of Rental and Service Charge on Delinquent Payment Charges. (Section 7) Not applicable since no charge for use.
- D. Interest. (Section 8) Not applicable since no charge for use.
- E. Acceptance of Rent Not a Waiver. (Section 9) Not applicable since no charge for use.
- F. Storage of flammable/hazardous materials and/or the construction of any structure shall not be permitted without prior approvals. No fueling or maintenance of vehicles permitted on the premises.
- H. PERMITTEE shall not do any paving, fencing, or alter the grade in any way, without prior written approval from the STATE.
- I. PERMITTEE shall be responsible for its own security. The STATE shall not be responsible for any loss of damages to PERMITTEE'S improvements, cars or individual property on the Premises because of theft, vandalism, or any object thrown from surrounding areas.
- J. No contaminated soil and no pollutants to be discharged into streets' drainage system.
- K. PERMITTEE must maintain and not damage any existing improvements (e.g. catch basins, drainage and/or landscaping appurtenances, sidewalks, curbing, etc.)
- L. Any valid complaints by neighboring properties (e.g. regarding excessive dust, dirt/mud, noise, etc.) must be addressed and satisfactorily resolved.
- M. PERMITTEE understands that the STATE is in possession of the premises and possesses title in fee simple and is entitled to 24-hour inspection without notice.

- N. If applicable, PERMITTEE shall, at its own expense, provide and maintain its own source of power/water/sewer or if provided by the STATE, PERMITTEE shall submeter and pay for its own charges for power/water. PERMITTEE shall, as detailed in Paragraph 6 hereinabove, indemnify, defend, and hold harmless the STATE from any loss or damage, including but not limited to the loss of revenues, incurred because of loss of power/water. PERMITTEE shall not add utilities to premises without STATE approval. Any existing utilities, state owned or otherwise are to be protected from damage.
- O. PERMITTEE shall adhere to special conditions, set forth by US Fish and Wildlife, to mitigate the existence of endangered Hawaiian Seabirds that may transit through the area. Please see attached, complete conditions.
- P. Prior to termination of the Permit and vacating of the Premises, PERMITTEE must coordinate with the Highways Division, subject to an inspection for final acceptance/return of the property in similar or better condition as agreed with the State.
- Q. PERMITTEE shall maintain any abutting accesses and roadways to the property. These areas will be kept clear of any debris or soil deposits when vehicles are entering or exiting their premises.
- R. The State will not be liable for any damages caused by future project affecting the premises and its improvements thereon.
- S. Indemnity. The PERMITTEE shall at all times with respect to the Project and the Premises use due care for public safety. It is strictly understood that the STATE shall in no way be held liable for any claims, damages, causes of action or suits resulting from any acts or omissions of the PERMITTEE nor shall the PERMITTEE be held liable for any claims, damages, causes of action, or suits resulting from any acts or omissions of the STATE or of those to whom the STATE has granted rights and privileges for use of the Premises. The PERMITTEE shall release, hold harmless, and indemnify the STATE and the State's directors, officers, employees, agents, elected officials, and boards, and their respective successors and assigns, from and against all claims, demands, liabilities, suits, actions, judgments, costs and expenses (including attorneys' fees) for loss, injury, death or damage, including, without limitation, claims for property damage, personal injury, or loss or death of persons, whenever such damage, injury, loss or death arises out of, is connected with or related to (a) occurrences or incidents on, within, under, over or across the Premises or the Project when caused by acts or omissions of the PERMITTEE, (b) the exercise by the PERMITTEE of the rights and privileges herein granted to the PERMITTEE, (c) any failure on the part of the PERMITTEE to use due care or otherwise perform in accordance with the terms and conditions of this Agreement, and/or (d) any act or

omission of the PERMITTEE and/or the PERMITTEE's use and occupancy of the Premises; provided, however, that the PERMITTEE shall not be responsible for indemnifying the STATE from and against any claims or damages arising out of the negligence or intentional misconduct of the STATE. This provision shall survive the expiration or earlier termination of this Agreement.

- T. Self-Insurance. The PERMITTEE has elected to self-insure all liabilities arising out of its operations and activities on the Premises which self-insurance shall be primary and non-contributory with any insurance policy maintained by the STATE. The PERMITTEE shall provide a letter of self-insurance to the STATE upon execution of this Agreement and annually thereafter. If and to the extent that any third-party contractor is contracted by the PERMITTEE to perform work on the Project or the Premises, the PERMITTEE shall require that such contractor includes the STATE as additional insured on all insurance policies covering such work and provide the STATE with thirty (30) days prior written notice of any termination, cancellation or material change in the coverage provided by said policies.
- U. Authorized Agents and Contractors. The PERMITTEE is authorized to allow its authorized agents and contractors to enter and use the Premises for the authorized Purpose.
- V. Indemnity. (Section 6) Not required. See Special Terms S.
- W. Reservation of Right to Amend the Terms and Conditions Including the Right to Increase or Decrease Rent. (Section 10) Not applicable. See Paragraph 27h. Any amendment shall be in writing signed by both parties.
- X. Attorney's Fees and Other Expenses. (Section 26) Not Applicable
- Y. Environmental Compliance-Permittee's Duties. PERMITTEE's obligation for disposal/removal/remediations is limited to any Hazardous Substance that PERMITTEE has caused to be present on the Premised or is the result of PERMITTEE's activities under this Permit.
- Z. The following are conditions set forth by US Fish and Wildlife with regards to bird species that may be found in the project area. These federal listed species may occur or transit through the vicinity of the proposed project area: the endangered Hawaiian Stilt; the endangered Hawaiian Petrel; the endangered Band-Rumped Storm-Petrel; the threatened Newell's Shearwater; and the Wedge-Tailed Shearwater.

Hawaiian Stilt:

Hawaiian Stilt nesting occurs from mid-February through August. If a nest is present, potential impacts include parents being flushed from the nest for extended periods of time causing the nest to fail or eggs or chicks being crushed by humans or equipment.

To avoid and minimize potential project impacts to Hawaiian Stilts, we recommend you consider incorporating the following applicable measures into your project:

Post and implement reduced speed limits and inform project personnel and contractors about the presence of endangered species on-site.

If water resources are located within or adjacent to the project site, incorporate applicable best management practices regarding work in aquatic environments into the project design.

Have a biological monitor that is familiar with the species' biology, conduct Hawaiian Stilt nest surveys where appropriate habitat occurs within the vicinity of the proposed project site prior to the project initiation. Repeat surveys again within three days of project initiation and after any subsequent delay of work of three or more days.

If a nest or active brood is found, contact the Service within 48 hours for further guidance. Establish and maintain a 100-foot buffer around all active nests and/or broods until the chicks have fledged. Do not conduct potentially disruptive activities or habitat alteration within this buffer. Have a biological monitor that is familiar with the species' biology present on the project site during all construction or earth moving activities until the chicks fledge to ensure that Hawaiian Stilts and nests are not adversely impacted.

#### Hawaiian Seabirds:

Hawaiian Seabirds may traverse the project area at night during the breeding season, March 1 to December 15. Outdoor lighting could result in seabird disorientation, fallout, and injury or mortality. Seabirds are attracted to lights and after circling the lights, they may become exhausted and collide with nearby wires, buildings, or other structures or they may land on the ground. Downed seabirds are subject to increased mortality due to collision with automobiles, starvation, and predation by dogs, cats, and other predators. Young birds (fledglings) traversing the project area between September 15 and December 15, in their first flights from their mountain nests to the sea, are particularly vulnerable.

To minimize potential impacts to all Hawaiian Seabirds, we recommend you consider incorporating the following applicable measures into your project:

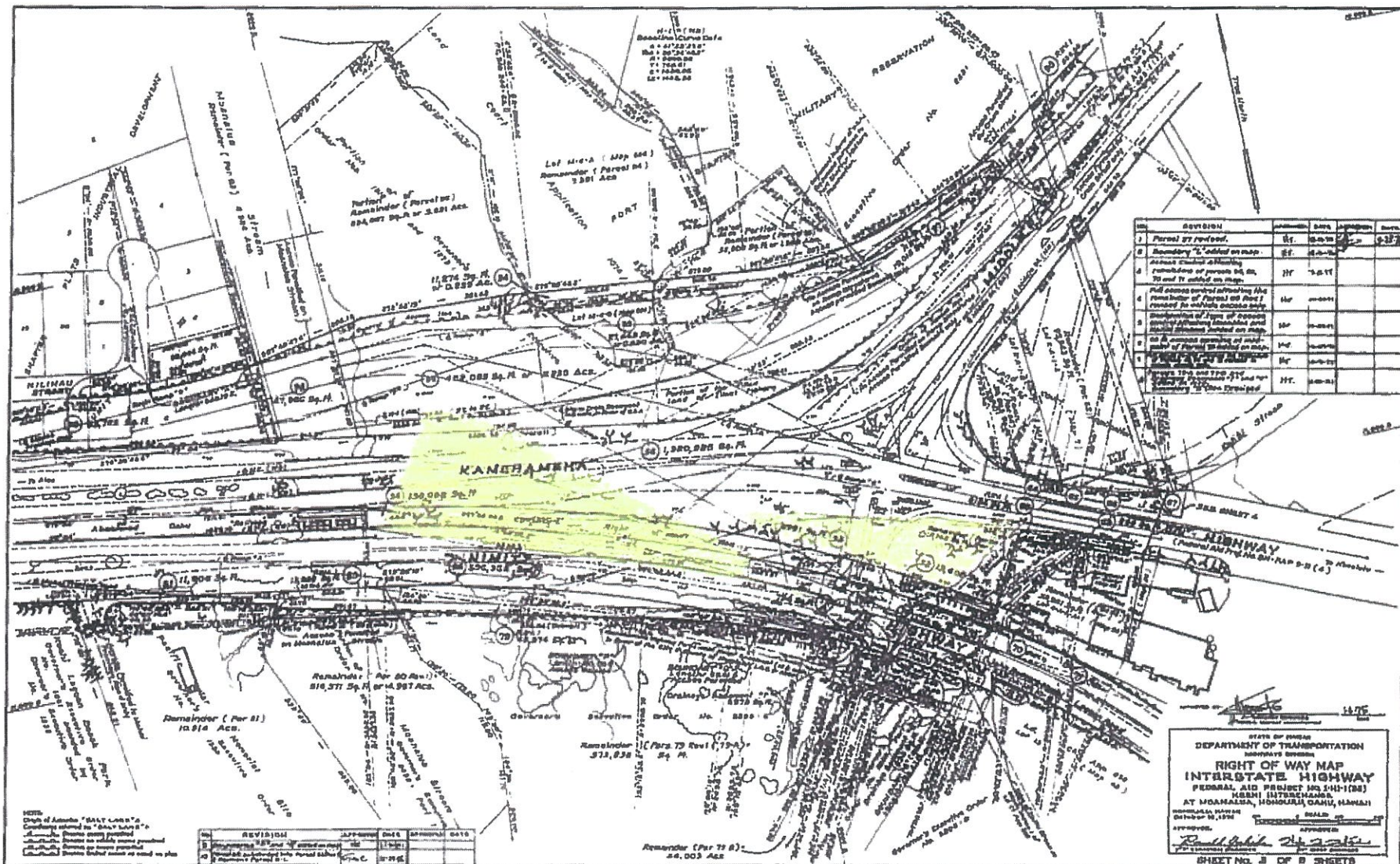
Fully shield all outdoor lights so the bulb can only be seen from below bulb height and only use when necessary

Install automatic motion sensor switches and controls on all outdoor lights or turn off lights when human activity is not occurring in the lighted area.

Avoid nighttime construction during the seabird fledging period, September 15 to December 15.



Provide all project staff with information about seabird fallout and let them know that downed seabirds can be taken to Sea Life Park for Rehabilitation. If it is determined that the proposed project may affect federally listed species, we recommend you contact US Fish and Wildlife service early in the planning process so that they may further assist you.



CITY COUNCIL  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII  
C E R T I F I C A T E

RESOLUTION 18-189, FD1

Introduced: 08/29/18 By: ERNEST MARTIN – BY REQUEST Committee: PUBLIC WORKS,  
INFRASTRUCTURE AND  
SUSTAINABILITY

Title: RESOLUTION APPROVAL TO ENTER INTO A REVOCABLE PERMIT WITH THE STATE OF HAWAII, DEPARTMENT OF  
TRANSPORTATION, HIGHWAYS DIVISION, TO USE AND OCCUPY LANDS UNDERLYING THE H-1 NIMITZ HIGHWAY  
VIADUCT AT THE MIDDLE STREET/KEEHI INTERCHANGE (INTERSTATE HIGHWAY FAP NO. I-HI-1(82), TMK: (1)1-1-003:  
PORTION OF ROAD, FOR THE PURPOSE OF STAGING OF EQUIPMENT FOR THE HART CONSTRUCTION OF RAIL –  
AIRPORT SEGMENT.

Voting Legend: \* = Aye w/Reservations

09/19/18	PUBLIC WORKS, INFRASTRUCTURE AND SUSTAINABILITY	CR-325 – RESOLUTION REPORTED OUT OF COMMITTEE FOR ADOPTION.
10/03/18	COUNCIL	RESOLUTION AMENDED TO FD1. 9 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN, MENOR, OZAWA, PINE. CR-325 AND RESOLUTION 18-189, FD1 WERE ADOPTED. 9 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN, MENOR, OZAWA, PINE.

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.

  
\_\_\_\_\_  
GLEN T. TAKAHASHI, CITY CLERK

  
\_\_\_\_\_  
ERNEST Y. MARTIN, CHAIR AND PRESIDING OFFICER